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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-177

GEORGE GOLDSTEIN, RECEIVER OF HOLIDAY NURSING HOMES, INC.,
PETITIONER,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF OF PETITIONER

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Petitioner, George Goldstein, pursuant to Rule 24(4) of the Rules of the Supreme Court of the United States, says that the respondent has raised a new argument in its opposition to the petition: to wit: "that contractually provided arbitration remedies must be exhausted prior to review of medicare provider reimbursement disputes" (Opp. 2).

Statement of the Case

Petitioner calls to the attention of this Court that the appeals procedure adopted by Blue Cross with the approval of the Secretary was adopted without notice to or participation by this provider in 1968 (Opp. 3) one year after petitioner nominated Blue Cross as its fiscal intermediary on January 5, 1967 (Pet. 6). It is not alleged that petitioner was a party to the adoption of this procedure or that it was notified of the same prior thereto. Petitioner alleges it was done unilaterally (Pet. 6, par. j).

Argument

1. The Fiscal Intermediary Is Not Acting in the Capacity of an Arbitrator.

Petitioner was not a party to the formation of or to the procedures of the Provider Appeals Committee (Pet. 6). This Committee was established by Blue Cross with the approval of the Secretary, after petitioner had agreed to the use of Blue Cross as its fiscal intermediary without such a procedure. It was established pursuant to an agreement with the Secretary (Pet. 6), not with petitioner.

Petitioner did not agree to submit its contract claims to arbitration and was not bound thereby.

2. Petitioner's Rights Do Not Derive Solely from Contract. The Statute Itself Affords Petitioner a Right to Reasonable Cost Payments. 42 U.S.C. 1395 (f)(b).

Petitioner, however, was not a party to the "arbitration" contract, supra.

Conclusion

For the above reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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